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Before the
Federal Communications Commission
Washington, D.C. 20554

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JUN 14 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Petitions of	)	
	)	
The California Public Utilities Commission	)	
and the People of the State of California	)	
	)	
(1) For Delegation of Additional Authority	)	NSD File No. L-98-136
Pertaining to Area Code Relief and to NXX	)	
Code Conservation Measures	)	
	)	
(2) For a Waiver to Implement a Technology-	)	NSD File No. L-99-36
Specific or Service-Specific Area Code	)	
	)	
In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions of the	)	
Telecommunications Act of 1996	)	

To: Chief, Common Carrier Bureau

COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

AIRTOUCH COMMUNICATIONS, INC.

Pamela J. Riley
David A. Gross
AirTouch Communications, Inc.
1818 N Street, N.W., Suite 800
Washington, D.C. 20036
(202) 293-3800

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List ABCDE

Its Attorneys.

June 14, 1999

SUMMARY

AirTouch urges the Commission to deny the California Public Utility Commission's petitions for a delegation of extraordinary authority concerning numbering issues and for a waiver of the rules to allow it to implement a technology- or service-specific area code. The Commission has plenary authority over numbering matters. Its *Pennsylvania Order* makes clear that state commissions have been delegated only limited authority concerning numbering issues. Moreover, the Commission's express policy is not to permit states to utilize technology- or service-specific area codes. In addition, the very policies the CPUC asks the Commission to change are now being reexamined in the *Numbering Resource Optimization* rulemaking, CC Docket No. 99-200. Grant of the CPUC petitions would limit the Commission's ability to craft effective national numbering resource optimization strategies in that docket.

The number crisis in California is not a shortage of numbers, but a shortage in *available supply* of numbers. Out of about 206 million numbers in the California area codes, only about 35-40 million are actually used, according to the CPUC's estimate — a statewide utilization rate of well below 20%. One major factor contributing to California's number exhaust is that California has about 800 rate centers and a growing number of CLECs who assertedly need to draw numbers from each rate center to compete statewide. Unlike wireless carriers, who draw numbers from relatively few rate centers and use those numbers efficiently, CLECs typically use numbers from all of the wireline rate centers in the area they wish to serve, regardless of how few customers they may have in each. The resulting number crisis is within the CPUC's control and can be addressed through rate center consolidation. By reducing the number of rate centers, the CPUC can increase number usage efficiency. Rate center consolidation, with rate rebalancing to facilitate revenue neutrality, can increase number availability far faster than 1000-block pooling.

In one petition, the CPUC seeks authority for a variety of numbering-related initiatives, including mandatory number pooling. These requests should be denied not only because the issues are better addressed in the pending *NRO* rulemaking, but also because the CPUC has failed to make the case for deviating from centralized number administration.

Authority for the mandatory number pooling trial, in particular, should be denied. In the *Pennsylvania Order,* the FCC made clear that it would henceforth permit only *voluntary* number pooling trials. Trials were permitted only because the results might be of assistance in a future FCC rulemaking on number pooling, but that proceeding has now begun and the proposed CPUC trial will begin far too late to potentially help. Moreover, the CPUC's proposed number pooling trial lacks safeguards the Commission found necessary in the *Pennsylvania Order* when it authorized the nation's sole mandatory pooling trial — a backup all-services overlay, assurance that only carriers who have implemented permanent number portability will be affected, and replacement by national rules and guidelines once adopted by the FCC. Contrary to existing FCC policy, the CPUC's plan would apparently apply to all carriers, including those not currently subject to the FCC's LRN/LNP requirements. Moreover, the CPUC lacks any concrete plans for a trial. Instead of putting a proposal on the table, it has asked for *carte blanche.* This open-ended request must be denied.

AirTouch also opposes the CPUC's request for authority to mandate number management practices, such as fill rates. First, the CPUC does not say why it has not used the authority concerning establishment of fill rates already granted in the *Pennsylvania Order*. Any expansion or redefinition of state authority over number management should be accomplished through rulemaking, not case-by-case delegations, and the *NRO* rulemaking is already addressing the complex issues involved in this area, as well as the roles (if any) the state commissions should play.

The CPUC's request for authority to assign NXX codes to individual carriers based on immediate need, outside the lottery process, should likewise be denied. In a recent order, this Commission granted relief to Sprint PCS in New York, as recommended by the state commission, after hearing comment from the public. Thus, there is an adequate mechanism already in place for handling such cases, and consequently there is no need for the requested delegation of authority. The CPUC's request for confirmation that states "do possess authority" concerning such NXX code allocations is patently incorrect, given that the FCC has made clear that it has plenary authority over code allocation and has not delegated such authority to state commissions, except in connection with area code relief decisions.

The next CPUC request for authority concerns mandating the return of unused NXX codes or 1000-number blocks. This is unwarranted, and should be denied, because there is an existing procedure for reclamation of codes by NANPA, under the INC Central Office Code Guidelines, and the issue is being further addressed in the *NRO* rulemaking. The CPUC has shown no unique or compelling reasons why it should be granted such authority, given the FCC's policy of keeping such authority centralized to avoid hampering NANPA in carrying out its national code administration duties. The CPUC's request for authority to access individual carriers' utilization data in connection with overseeing the NXX code reclamation process should be denied, due to the need to safeguard this highly sensitive information. Similarly, the CPUC should not be granted authority over reclamation of underutilized partial NXX codes under number pooling. Again, there are established guidelines and procedures governing this process, and the CPUC has not shown why its requested authority is needed.

Finally, the CPUC's waiver request for technology- or service-specific area codes should be denied. The Commission has banned such codes since 1996 because such segregation "would be unreasonably discriminatory and would unduly inhibit competition," hinder new entry, and provide particular industry segments with an "unfair advantage." For these reasons, the Commission has required technology-neutral administration of the NANP, including neutrality with respect to use of area codes by different service providers and technologies. A cellular user's telephone number should carry no less geographical association than the number of a landline user. The fact that numbers are in short supply in California does not warrant deviation from this policy. An all-services overlay adds the same amount of new numbering resources as a restricted overlay. Any deviation from the existing uniform policy permitting only all-services overlay codes must be made through rulemaking. Finally, AirTouch notes that the use of service- or technology-specific area codes is contrary to existing CPUC policy, which specifically rules out the use of such codes in the interest of competitive neutrality.

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To: Chief, Common Carrier Bureau

COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

AirTouch Communications, Inc. ("AirTouch") hereby submits comments in response to the Bureau's Public Notices[1] inviting comment on two petitions filed by the California Public Utilities Commission and the People of the State of California (the "CPUC") that ask the Commission to (a)

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[1] Public Notice, *Common Carrier Bureau Seeks Comment on a Petition of the California Public Utilities Commission and the People of the State of California for Delegation of Additional Authority Pertaining to Area Code Relief and to NXX Code Conservation Measures,* NSD File No. L-98-136, DA 99-928 (CCB, May 14, 1999); Public Notice, *Common Carrier Bureau Seeks Comment on a Petition of the California Public Utilities Commission and the People of the State of California for a Waiver to Implement a Technology-Specific or Service-Specific Area Code,* NSD File No. L-99-36, DA 99-929 (CCB, May 14, 1999). AirTouch is filing copies of these comments in each of the above-referenced dockets and files.

delegate to the CPUC several types of extraordinary authority concerning numbering exhaustion measures[2] and (b) give the CPUC authority to implement a technology- or service-specific area code at its discretion.[3] AirTouch respectfully submits that both petitions should be denied.

INTRODUCTION

AirTouch will be directly affected by the Commission's action in this proceeding. AirTouch provides cellular service through its wholly-owned subsidiary, AirTouch Cellular, and affiliated companies, and its coverage in the state of California includes the greater Sacramento, Los Angeles, and San Diego areas. AirTouch Paging, also a wholly-owned subsidiary of AirTouch, provides paging service throughout much of the United States, including coverage of most of the state of California. AirTouch's cellular and paging operations in other states will be affected as well, if the Commission here departs from a national approach to number conservation within the North American Numbering Plan and instead allows state utility regulators to adopt a patchwork of number conservation measures — and in particular, measures that may impede the ability of AirTouch to meet customers' demands for wireless service.

DISCUSSION

AirTouch submits that both CPUC petitions should be denied. The Commission has plenary authority over numbering matters and it has already made clear, in the *Pennsylvania Order,*[4] the boundaries of state commissions' delegated authority with respect to numbering issues. Moreover,

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[2] Petition of the California Public Utilities Commission and the People of the State of California for Delegation of Additional Authority (filed April 23, 1999) ("Delegation Petition").

[3] Petition of the California Public Utilities Commission and the People of the State of California for a Waiver to Implement a Technology-Specific or Service-Specific Area Code (filed April 23, 1999) ("Area Code Petition").

[4] *Pennsylvania Public Utility Commission,* NSD File No. L-97-42; CC Docket 96-98, *Memorandum Opinion and Order and Order on Reconsideration,* FCC 98-224, 13 Comm. Reg. (P&F) 867, 1998 FCC LEXIS 5036 (September 28, 1998) ("*Pennsylvania Order*").

the Commission has expressly considered and rejected state requests for authority to implement technology- and service-specific area codes. More fundamentally, the Commission has recently initiated CC Docket No. 99-200, a rulemaking proceeding in which the Commission will consider the merits of a variety of number conservation measures, including those the CPUC seeks authority to employ in the petitions at issue here.[5] Granting the CPUC's petitions would either prejudge or undercut the policies to be adopted in that proceeding and would limit the Commission's ability to craft effective *national* strategies for numbering resource optimization. Given that the Commission is examining the issues raised by the CPUC's petitions in the rulemaking, the petitions should promptly be denied.[6]

California does have a severe number *availability* shortage, particularly in the most highly developed areas, but it does not have a number shortage. The CPUC estimates that about 35-40 million numbers are actually used in California, out of approximately 206 million numbers theoretically available.[7] *That means that the statewide average utilization rate is only 17-19%!* Despite a plentiful supply of numbers, there is a shortage.

The CPUC makes no distinction between wireless and wireline carriers, or between ILECs and CLEC, in its assertion about inefficient utilization of numbering resources. These are critical

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[5] *See Numbering Resource Optimization,* CC Docket No. 99-200, *Notice of Proposed Rulemaking,* FCC 99-122 (June 2, 1999) (*NRO NPRM*).

[6] AirTouch notes that the caption of the *NRO NPRM* reflects that the CPUC's Area Code Petition has been incorporated into the rulemaking, in whole or in part. The *NRO NPRM* notes the existence of both CPUC filings, *see NRO NPRM* at ¶ 245 & nn.384-85, but does not indicate how the pendency of the rulemaking will affect action on the petitions. It notes that pleadings in response to the Area Code Petition will be incorporated into the record of the rulemaking, but said that the Delegation Petition would be addressed in a separate proceeding. It did not indicate, however, whether the Area Code Petition would be addressed at the conclusion of the rulemaking or separately. *See id.*

[7] Delegation Petition at 13.

distinctions, however. Wireless carriers are highly efficient users of numbers. Because they typically pull numbers from only a limited number of rate centers, they are able to utilize NXX codes at high fill levels. Moreover, their use of numbers from only some rate centers in their service areas inherently conserves NXX codes. Instead of having low-utilization codes in hundreds of rate centers, as CLECs do, wireless carriers have high-utilization codes in a few rate centers.

In AirTouch's view, there are two key contributors to the California number availability shortage, rate center inefficiencies and the assignment of numbers in blocks of 10,000. The rate center issue is clearly within the authority of the CPUC to address on its own, and it can be resolved now. As the CPUC acknowledges, California has about 800 rate centers. Because of the number of rate centers, a CLEC wishing to offer statewide service, with numbers from every rate center, would need 8,000,000 numbers, regardless of its number of customers. This rate-center-based inefficiency can be addressed through rate center consolidation. This may need to be done together with rate re-balancing to minimize the rate impact on ILEC revenues. While this poses implementation issues, it can be accomplished quickly — in far less time than the 19 months or so required to establish and implement 1000-block pooling. The benefits of rate center consolidation can be substantial. If the 800 rate centers were reduced to 200, for example, a CLEC would need to occupy only one-fourth as many numbers to have a presence in every rate center statewide; if the 800 rate centers were only reduced to 400, a CLEC would need only half as many numbers as now. The CPUC should take steps to mitigate the inefficiency resulting from pasting a multi-competitor environment onto a service map designed to accommodate localized telephone monopolies.

The Commission has made clear that it encourages state commissions to consider rate center consolidation and that they "do not require any additional delegation of authority from the

Commission" to do so.[8] The CPUC has failed to take full advantage of the authority it has already been delegated, however. Because it has not taken steps to reduce numbering inefficiencies that are entirely within its control, a further delegation of authority or rule waiver should not be considered.

I. THE CPUC DELEGATION PETITION SHOULD BE DENIED

The CPUC's Delegation Petition seeks a variety of delegations of authority that would result in the Balkanization of numbering administration, introduce sources of conflicting regulation, and diminish national uniformity in utilization of the North American Numbering Plan. Congress expressly granted the FCC plenary jurisdiction over numbering for the United States. Section 251(e)(1) of the Communications Act provides that:

> The Commission shall have *exclusive jurisdiction* over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude *the Commission* from delegating to State commissions or other entities all or any portion of such jurisdiction.[9]

The Commission has repeatedly emphasized the benefits of centralized, national numbering administration: efficient delivery of telecommunications services, consistent application of code assignment guidelines, reduction of administrative burdens facing carriers, and allowing the Commission and regulators from other NANP member countries to keep abreast of code assignments and predict potential problem areas.[10] Finally, the Commission further affirmed that its grant of plenary authority preempted even state regulatory *oversight* of NXX code administration, dismissing

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8 *NRO NPRM* at ¶ 117.

9 47 U.S.C. § 251(e)(1) (emphasis added).

10 *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, CC Docket 96-98, 11 F.C.C.R. 19,392, 19,533 ¶¶ 320-322 (1996) (*Second Local Competition Order*).

as moot state regulators' petitions arguing otherwise.[11] The CPUC's Delegation Petition should be denied because the relief it seeks would undermine this national approach to numbering issues.

A. A Mandatory Number Pooling Trial Is Unwarranted

In seeking authority to order a mandatory number pooling trial, the CPUC is asking for a blank check — *carte blanche* to "explore 1,000-block pooling and ITN [individual telephone number] pooling."[12] Even without the pendency of the Docket 99-200 *Numbering Resource Optimization* rulemaking, this request was unsupportable. Now that the rulemaking has been initiated, a grant of the CPUC's request would be wholly inappropriate.

In the *Pennsylvania Order,* the Commission made clear that its policy was to strictly limit state commissions' authority to engage in number pooling trials. In particular, it specifically declined to permit states to order number pooling.[13] It delegated to state commissions the authority to conduct number pooling trials only if, among other things, "carrier participation is voluntary."[14] The CPUC's request admittedly falls outside this delegation of authority; that is why it seeks an additional delegation of authority.

The CPUC has not provided any reasoned justification for giving it authority to implement mandatory number pooling in California, however. By contrast, in the *Pennsylvania Order,* the Commission decided to allow limited state number pooling trials only because "experimental number pooling trials may provide useful information that will aid in the development of uniform

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11 *See Second Local Competition Order* at 19,521 ¶ 293; *see also Administration of the North American Numbering Plan, Third Report and Order, and Toll Free Service Access Codes, Third Report and Order*, 12 F.C.C.R. 23,040, 23,071-75 (1997) (naming a central NANP administrator and established a framework for carrier support of NANPA administration).

12 Delegation Petition at 9.

13 *Pennsylvania Order* at ¶ 27.

14 *Pennsylvania Order* at ¶ 27.

national standards for number pooling implementation, architecture, and administration."[15] The CPUC's proposal will not provide such assistance, however. As the CPUC admits, it may take up to 19 months to implement 1000-block pooling.[16] Additional time will be needed for the CPUC to develop a detailed implementation plan and "work with the industry to develop a structure for the trial," as well as for Common Carrier Bureau review of the detailed plan.[17] Thus, *the CPUC experiment would begin about two years in the future — far too late* to yield information that will assist this Commission in reaching decisions or establishing standards for national number pooling, since the Commission has issued its *NRO NPRM,* the comment cycle will close this summer, and a decision is anticipated next winter.

Further, the CPUC does not attempt to assure the Commission that its proposed mandatory number pooling trial would be subject to the same kinds of safeguards that persuaded the Commission to authorize an Illinois mandatory pooling trial, the *only* mandatory trial authorized.[18] In the *Pennsylvania Order,* the Commission allowed that experiment because "Illinois has taken steps to ensure that the trial will not impede our NPA relief guidelines and efforts to initiate national number pooling standards."[19] In particular, Illinois:

- had taken the precaution of ordering an all-services overlay for the NPA affected by the pooling that would supersede the pooling trial if all NXXs in the existing NPA were depleted;

- established that the pooling experiment would affect "only those carriers that have implemented permanent number portability," thereby assuring that wireless carriers (who are not yet subject to permanent number portability) would continue to have access to NXX codes; and

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15 *Pennsylvania Order* at ¶ 27.

16 Delegation Petition at 9.

17 Delegation Petition at 10.

18 *Pennsylvania Order* at ¶ 30 ("We . . . limit this grant of authority only to Illinois.").

19 *Pennsylvania Order* at ¶ 30.

- ensured that the trial pooling procedures would be superseded by any national rules and guidelines mandated by the Commission.[20]

The CPUC proposal, by contrast, includes none of these assurances and is completely open-ended: It does not even state what areas would be subject to its pooling trial — specific NPAs or the whole state. The CPUC gives no assurance that it will supersede the pooling trial when NXXs are depleted and open additional NXXs through use of all-services overlay codes — indeed, given the rapid rate at which NPAs are being exhausted in parts of California, such an assurance is unlikely. Likewise, the CPUC makes no pretense of applying its trial only to carriers who are capable of Service Provider ("SP") Location Routing Number ("LRN") Local Number Portability ("LNP") requirement. It is also completely silent on how its trial would mesh with national number pooling rules and guidelines once adopted by this Commission. Accordingly, grant of the CPUC's request would not be consistent with the principles underlying the *Pennsylvania Order.*

There is no need for California to duplicate the Illinois tests, given the time constraints of the Docket 99-200 rulemaking. It would also be inappropriate for California to test a substantially different approach to mandatory number pooling, given the Commission determination that there should not be "multiple, inconsistent pooling trials throughout the country."[21] The CPUC, however, does not propose anything specific enough for the Commission to determine whether its trial would be duplicative of the Illinois experiment, or would instead be inconsistent with it.

Indeed, the CPUC apparently does not have any concrete plans for its proposed trial. The CPUC acknowledged that the *Pennsylvania Order* "envisioned states proposing detailed plans," and that it is unable to meet this expectation.[22] The CPUC says it is "unable to offer such a proposal"

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20 *Pennsylvania Order* at ¶ 30.

21 *Pennsylvania Order* at ¶ 30.

22 Delegation Petition at 9-10.

because, given the industry's opposition to such a trial in California, the CPUC does not expect the industry to reach consensus on how to structure a trial.[23] Without even the outlines of a proposal, the CPUC offers no information on how its proposed mandatory trial might assist in national numbering conservation efforts or on what other basis it should be delegated authority. It truly seeks a blank check. In light of the detailed examination given the Illinois plan, the CPUC's "plan" must be rejected. No grounds exist for an open-ended delegation of authority to engage in a mandatory number-pooling trial in California.

The open-ended authority sought by the CPUC for a mandatory 1000-block number pooling "trial" is completely inconsistent with FCC policy. At a minimum, the Commission must make clear that if 1000-block pooling is ordered, it may only be imposed on carriers that are subject to a SP-LRN/LNP requirement. Not all carriers in California — or elsewhere — are currently subject to the SP-LRN/LNP capability requirement. The Commission has made LNP mandatory only in the 100 largest MSAs, and even in those markets, CMRS carriers are not currently required to be LNP-compliant until November 24, 2002.[24] California cannot be allowed to ignore this FCC-established policy or to discriminate against the carriers that the FCC has exempted from SP-LRN/LNP. Thus, assuming *arguendo* that a mandatory number pooling trial were permitted in California, it would have to be designed to protect the access of non-SP-LRN/LNP carriers to sufficient NXX codes to continue growing their businesses. The Illinois test does that by ensuring the availability of an all-services overlay that will *supersede* pooling when the supply of NXX codes is depleted. Nothing

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[23] Delegation Petition at 10.

[24] *CTIA Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability,* WT Docket No. 98-229, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 99-19 at ¶ 45, 1999 FCC LEXIS 641 (Feb. 9, 1999).

has changed since the *Pennsylvania Order* to warrant deviation from this basic principle of nondiscriminatory access to numbers.

Finally, number pooling will not solve the problem that California has created for itself by mapping out some 800 discrete rate centers for a competitive industry based largely on historical patterns of wireline telephone buildout in a monopoly environment. Some rate centers cover but a few city blocks. Without consolidation of rate centers, California will continually exhaust its numbering resources even if 1000-block pooling is used, since each CLEC seeking to provide statewide service aligned with wireline rate centers will have to obtain at least one block in each rate center. A significant reduction in the number of rate centers remains essential to number conservation in California, because the enormous (and growing) number of rate centers is one of the root causes of number exhaust.

B. The Commission Should Not Grant the CPUC Authority to Mandate Numbering Management Practices at this Time

The CPUC has asked that it be explicitly authorized "to adopt efficient number management practices such as 'fill rates' or sequential numbering."[25] AirTouch is a strong supporter of efficient number management, but respectfully submits that the CPUC's request should not be granted at this time.

First, the *Pennsylvania Order* already gives the CPUC part of the authority it asks. It says that state commissions and NANPA "may consider imposing a usage threshold that a carrier must meet in its NXXs before obtaining another NXX in the same rate center."[26] The CPUC has

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25 Delegation Petition at 11.

26 *Pennsylvania Order* at ¶ 24.

apparently not used this delegated authority. It does not explain why the Commission should grant it even broader delegated authority.

Any expansion or redefinition of state commissions' authority to engage in number management should be determined through rulemaking. In the *Number Resource Optimization* rulemaking, the Commission is now examining a variety of efficient number management practices, including fill rates, or numbering utilization rates. The *NRO NPRM* seeks comment on a plethora of issues relating to fill rates, including determining the appropriate utilization threshold(s), whether there should be different thresholds for different types of service provider, whether the fill rates should be fixed or variable over time, and whether fill rates should apply nationwide or only in areas (such as the 100 largest MSAs) with the most number exhaust difficulties.[27] It also seeks comment on how the utilization thresholds should be calculated, whether certain factors should be excluded from the calculation, and whether utilization levels should be calculated on an NPA-wide or rate-center-wide basis, and a host of other related issues.[28] And, most relevant here, the Commission is considering whether there should be a uniform nationwide utilization threshold scheme, or, alternatively, whether state commissions should be permitted to set utilization rates from within a range established by the FCC.[29]

The Commission would be "jumping the gun" to grant the CPUC authority to mandate particular fill rates or prescribe other, related, numbering techniques beyond those authorized already, when an FCC rulemaking has just been initiated concerning this very subject. It would be

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27 *NRO NPRM* at ¶ 63.

28 *NRO NPRM* at ¶ 64-67.

29 *NRO NPRM* at ¶ 63.

doubly inappropriate to do so when the rulemaking explores whether the policies should be administered nationally or at the state commission level.

The CPUC has no existing authority to set utilization rates, other than as specified in the *Pennsylvania Order*. If it were granted the delegation of authority sought here, the CPUC would have to conduct a proceeding completely duplicative of the Commission's CC Docket No. 99-200 to decide what utilization rates to set. To confirm, this Commission has plenary authority over numbering and the CPUC has only such authority as this Commission sees fit to delegate. There is no basis for granting the delegation sought by the CPUC pending the outcome of the ongoing rulemaking.

C. No Delegation to the CPUC Is Warranted for Responding to Requests from Individual Carriers for NXX Codes

The CPUC has requested authority to give NXX codes to individual carriers demonstrating an immediate need for codes outside the lottery process. Again, AirTouch agrees with the concept, but not with the CPUC's request. Of course individual carriers' needs must be addressed when they require NXX codes for immediate usage outside the lottery process. No delegation of authority to state commissions is needed for this, however, because the Commission has in place an adequate procedure for addressing such situations.

The Commission's recent order concerning Sprint PCS indicates how carriers needing codes immediately may proceed. There, the Commission noted that while the carrier had initially sought relief through the state commission, the relief was ultimately granted by the FCC pursuant to its plenary authority, after the state commission indicated its support for the relief. Once the state commission indicated that it believed the relief should be granted, the carrier filed a petition for relief

with the FCC, and after soliciting public comment the FCC directed NANPA to issue the needed codes to the carrier in question.[30]

The CPUC has phrased its request in terms of asking the Commission "to affirm that states do possess authority to order the NANPA to allocate NXX codes,"[31] but this is patently incorrect. The *Sprint PCS* order makes clear that the FCC retains plenary authority to allocate codes in special cases and that state commissions have only an advisory role. Moreover, the *Pennsylvania Order* expressly indicates that states have only the limited authority that the FCC has explicitly delegated. It states that the FCC had not previously "delegate[d] any authority to state commissions in the area of NXX code allocation or administration. Therefore, a state commission ordering NXX code rationing, or any other NXX code conservation measure is, under the current regulatory structure, acting outside the scope of its delegated authority."[32] The *Pennsylvania Order* proceeded to delegate "a limited amount of additional authority to state commissions that will allow them to order NXX code rationing . . . only in conjunction with area code relief decisions . . . ."[33] Nowhere in that order did the Commission indicate that states have any more than this highly constricted authority concerning NXX code allocations. Accordingly, the CPUC request for a ruling concerning allocation of NXX codes should be denied.

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30 *Letter to Mr. Ronald R. Conners, Director, North American Numbering Plan Administrator re: Sprint PCS,* NSD File No. 99-25, DA 99-505, 1999 FCC LEXIS 1003 (CCB Mar. 12, 1999) (*Sprint PCS*).

31 Delegation Petition at 12.

32 *Pennsylvania Order* at ¶ 23.

33 *Pennsylvania Order* at ¶¶ 23-24.

D. The CPUC Should Not Be Authorized to Order the Return of Unused NXX Codes to NANPA

The CPUC's next request is to be permitted to order carriers to return unused NXX codes or 1000-number blocks to NANPA for assignment, and that it also be given access to any utilization data collected by NANPA. The CPUC acknowledges that the Commission expressly held to the contrary in the *Pennsylvania Order,* and also acknowledges that it does not "have staff resources" to study the utilization of NXX codes by the "more than 90 CLECs, 20 ILECs, and 56 wireless providers possessing NXX codes" in the state. It nevertheless asks for such authority because the California State Legislature may grant it funding and require it to perform a utilization study concerning numbering resources in the state.[34]

The CPUC's request should be denied. Again, the CPUC's request "jumps the gun," because the Commission is addressing these very issues in its pending *NRO NPRM.*[35] State regulators do not currently have authority to review utilization levels or to order reclamation of unused NXX codes (or in areas subject to 1000-number pooling, blocks of 1000 numbers). Currently, this is a task for NANPA, under the INC Central Office Code Guidelines.[36] In the *Pennsylvania Order,* the Commission emphasized that there is a need to have national uniformity in the approach to number administration: "If each state commission were to implement its own NXX code administration

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34 Delegation Petition at 13-14.

35 *See NRO NPRM* at ¶¶ 95-100.

36 *See* Industry Numbering Committee, *Central Office Code (NXX) Assignment Guidelines,* INC 95-0407-008 (Apr. 26, 1999) (available at <http://www.atis.org>). Section 8.0 sets forth the procedure and allocates responsibility for reclamation of unused codes. Specifically, the code holder has responsibility for turning in codes that are in its inventory but unused, in accordance with established criteria. NANPA has responsibility for contacting code holders to seek reclamation of codes that should have been turned in because they are unused. The guidelines establish which codes should be reclaimed and which can continue to be held by the code holder, and provide for referral of certain issues to the Industry Numbering Committee for resolution.

measures without any national uniformity or standards, it would hamper the NANPA's efforts to carry out its duties as the centralized NXX code administrator."[37] In the current *NRO NPRM,* the Commission is exploring a variety of other options — including the delegation of additional authority to state commissions. The CPUC has shown no unique or compelling reasons why it should be granted such authority before the Commission has completed its proceedings, given that the Commission's unambiguous current policy is to keep such authority centralized.

Moreover, AirTouch specifically objects to the CPUC's attempt, through this request, to obtain access to carriers' utilization data. This information is highly commercially sensitive and proprietary and should not be made available to any state agency. The confidential treatment afforded to such information is an important aspect of the NANPA's role as a centralized independent third party administrator. Grant of the CPUC's request would open the possibility of carriers' confidential information being subject to disclosure by 51 different state commissions either inadvertently or by virtue of public disclosure statutes. Moreover, there is simply no need for the CPUC to have access to this information on an individual carrier basis. Assuming *arguendo* that the CPUC needed carrier data, NANPA should provide no more than aggregated information that will fully enable the CPUC to carry out its lawful duties.

E. The CPUC Should Not Be Authorized to Order the Return of Unused or Underused Partial NXX Codes to the Pooling Administrator

The CPUC seeks authority, if its mandatory number pooling request is granted, to order carriers with underused or unused 1000-number blocks to return them to the pooling administrator. This request should be denied for the same reasons as the CPUC's request for authority to order a

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[37] *Pennsylvania Order* at ¶ 33.

mandatory pooling test. If mandatory pooling is not authorized, this request for number return authority becomes moot.

If a mandatory pooling experiment is authorized, however, AirTouch submits that the number return authority is still not needed. The existing guidelines for number pooling administration already provide for a 1000-block reclamation process overseen by the pool administrator.[38] The CPUC has not shown why its requested authority is needed, in light of the existing process. To proceed as the CPUC asks would splinter the regulation of number reclamation, and the national pooling administrator would have to comply with a plethora of locally-established policies, "hampering [its] ability to carry out its duties as the centralized . . . administrator."[39]

Any problems the CPUC may have with the established reclamation procedure should be brought to the attention of the Industry Numbering Committee for resolution. In the absence of an identifiable problem that cannot be resolved through the established channels, there is no justification for injecting state regulators into a process that is not subject to their jurisdiction in the first place.

II. THE AREA CODE PETITION SHOULD BE DENIED

The CPUC's Area Code Petition, which seeks authority to impose technology- or service-specific area codes, should likewise be denied. The Commission clearly set forth its reasoning for banning such area code overlays in 1996:

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[38] Industry Numbering Committee, *Thousand Block (NXX-X) Pooling Administration Guidelines,* INC 99-0127-023 (Jan. 27, 1999) (available at <http://www.atis.org>). Section 10.0 of the guidelines covers reclamation of 1000-number blocks. Similar to the procedure set forth in the Central Office Code Guidelines, the Pooling Guidelines require the assignee of a block of numbers to turn it in to the Pool Administrator if it is not needed, in accordance with established criteria, and authorizes the Pool Administrator to seek reclamation from assignees of blocks that are unneeded but have not been turned in.

[39] *Pennsylvania Order* at ¶ 33.

> [W]e conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the *Ameritech Order* by explicitly prohibiting all service-specific or technology-specific area code overlays because every service-specific or technology-specific overlay plan would exclude certain carriers or services from the existing area code and segregate them in a new area code. Among other things, the implementation of a service or technology specific overlay requires that only existing customers of, or customers changing to, that service or technology change their numbers. Exclusion and segregation were specific elements of Ameritech's proposed plan, each of which the Commission held violated the Communications Act of 1934.[40]

The Commission further held:

> Service-specific and technology-specific overlays do not further the federal policy objectives of the NANP. They hinder entry into the telecommunications marketplace by failing to make numbering resources available on an efficient, timely basis to telecommunications services providers. As we describe in detail above, service-specific overlays would provide particular industry segments and groups of consumers an unfair advantage. We have also stated that administration of the NANP should be technology neutral; service-specific overlays that deny particular carriers access to numbering resources because of the technology they use to provide their services are not technology neutral. [41]

The CPUC does not address the rationale for barring technology- and service-specific area codes. Instead, it argues that the growth in demand for NXX codes by "cellular phone companies . . . , paging companies . . . , and CLECs" accounted for 1,614 new NXXs assigned in 1998, compared with 218 assigned to ILECs. It further notes that the CPUC is often asked why it does not create one or more area codes "for specific uses, such as faxes or wireless providers."[42] The CPUC's

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[40] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket 96-98, *Second Report and Order and Memorandum Opinion and Order,* 11 F.C.C.R. 11392 at ¶ 285 (1996) (*Second Local Competition Order*)

[41] *Second Local Competition Order* at ¶ 305.

[42] Area Code Petition at 5.

only reason for asking for authority to require technology- or service-specific overlays is that there is a lot of demand for numbers by new service providers, and some of the providers will not be subject to pooling, initially if at all.

Again, in 1996 the Commission specifically addressed similar arguments:

> We find the Texas Commission's arguments in support of its proposed wireless-only overlay unpersuasive. It argues, for example, that the wireless overlay will extend the life span for the area code relief plan. What extends the life span of a relief plan, however, is not so much the wireless overlay as the introduction of a new NPA with its 792 additional NXXs. This being the case, the Texas Commission provides no compelling reason for isolating a particular technology in the new NPA.

AirTouch respectfully submits that the CPUC has made no showing that its situation is any different from that of the Texas Commission in 1996. California has a shortage of numbers. The addition of an overlay NPA will alleviate that shortage to some degree. An all-services overlay adds as many new numbers as a technology- or service-specific overlay.

The CPUC argues that the onset of number pooling may warrant segregating non-pooling-capable carriers in a different NPA from pooling carriers.[43] AirTouch submits that such segregation will not be warranted. Whether or not that will be so, however, there should be a single policy nationwide governing the authorization of overlay codes. There is such a policy right now, embedded in 47 C.F.R. § 52.19(c)(3), that only all-services overlay codes are permitted. The CPUC has shown no reason why California should be treated differently from all other states in this regard. Any decision to modify this uniform policy as a general matter must be made through rulemaking, not adjudication or waiver. Indeed, one of the subjects being addressed in the *NRO NPRM* is

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[43] Area Code Petition at 6.

whether the ban on service- and technology-specific overlays should be revisited. The Commission there made clear, however, that such overlays "raise serious competitive issues."[44]

The competitive issues are indeed serious. Wireless carriers have finally reached the point where their service is a viable substitute for landline service for some users. Many users now give out their cellular or PCS phone number instead of, or in addition to, their landline number. Having a wireless phone number with the same NPA as a landline phone both diminishes the distinction between the two and gives the caller an indication of the called party's geographic home base. By giving out a cellphone number with the same NPA as a Los Angeles landline phone, for example, a customer lets his or her acquaintances know that the phone is a Los Angeles number. If the cellphone had a "different" NPA, one restricted to wireless phones throughout what would otherwise be multiple NPAs, the cellphone number does not convey this important information and becomes a less viable substitute for a landline telephone as a result.[45]

Moreover, grant of the waiver requested should also be denied because even if, *arguendo,* the Commission were to authorize the CPUC to implement service- or technology-specific overlay area codes, the use of such codes would be contrary to the CPUC's own policies. Just last year, the CPUC issued a decision reiterating its 1996 determination that "as a condition for consideration of

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44 *NRO NPRM* at ¶ 257.

45 Ultimately, geographic number portability may erase the association of a telephone number with a specific geographic area. The Commission has not determined whether, or when, geographic number portability will be required. To date, it has established rules only for service provider number portability within a given geographic area. Accordingly, telephone numbers currently retain a geographic association.

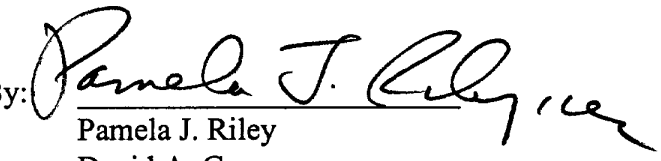
the overlay as a relief option, the overlay *must be competitively neutral.*"[46] In that 1996 decision, the CPUC specifically held that competitive neutrality required that any overlay NPA be equally open to wireless carriers, ILECs, and CLECs.[47]

CONCLUSION

For the foregoing reasons, the California Public Utilities Commission's two numbering petitions should be promptly dismissed or denied.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS, INC.

By: 

Pamela J. Riley
David A. Gross
AirTouch Communications, Inc.
1818 N Street, N.W., Suite 800
Washington, D.C. 20036
(202) 293-3800

June 14, 1999

Its Attorneys.

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[46] *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service,* Decision 98-11-065, 1998 Cal. PUC LEXIS 705 at *4 (CPUC, Nov. 11, 1998) (footnote omitted, emphasis added), *citing Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service,* Decision 96-08-028, 96 Cal. PUC LEXIS 848 at *16-*23 (CPUC, Aug. 2, 1996).

[47] Decision 96-08-028, 1996 Cal. PUC LEXIS 848 at *19. That decision also required the use of ten-digit dialing throughout the overlaid area, consistent with FCC rules. While the FCC rule addresses only all-services overlays, both the logic underlying the rule and the rationale in the CPUC decision make clear that competitive neutrality would require 10-digit dialing throughout the area covered by any overlay, including one limited to specific services or technologies if such an overlay were authorized. Thus, if, *arguendo,* the CPUC were granted the authority it seeks and then created a statewide service-specific overlay, it would have to implement mandatory ten-digit dialing throughout the state for customers in the overlay code and in the codes overlaid by it, to foster technological convergence and to lessen the competitive barriers among the different services and technologies. California could not, consistent with its own decision, mandate that wireless customers use ten-digit dialing for all calls if wireless phones were relegated to an overlay mapped over multiple NPAs, while the landline customers in those NPAs remain able to use seven-digit dialing.